

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANET S. LEIWE,)
)
Plaintiff,)
)
v.) No. 4:06 CV 196 DDN
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the court on the motion of defendant Michael Astrue to alter or amend the court's remand order, pursuant to Federal Rule of Civil Procedure 59(e). (Doc. 23.)

On February 26, 2007, the undersigned entered an order reversing and remanding the decision of the Commissioner of Social Security. (Docs. 22, 23.) Defendant now argues that the court applied the wrong standard when it found there was not substantial evidence on the record supporting the ALJ's decision that plaintiff could lift 25 pounds frequently and 50 pounds occasionally.

This court has broad discretion when determining whether to alter or amend an order. Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413-14 (8th Cir. 1988). Motions under Rule 59(e) should only be granted to correct manifest errors of law or fact. Norman v. Arkansas Dept. of Educ., 79 F.3d 748, 750 (8th Cir. 1996); Hagerman, 839 F.2d at 414.

Here, the order of February 26, 2007, does not contain manifest errors of fact or law. Defendant argues the court applied the wrong legal standard, because it was the plaintiff's burden to prove her RFC. The court's role on judicial review is to determine whether the ALJ's decision is supported by substantial evidence on the record as a whole. Travis v. Astrue, ---F.3d---, 2007 WL 601511, at *2 (8th Cir. Feb. 28, 2007). The ALJ's decision, specifically that plaintiff could lift 25 pounds frequently and 50 pounds occasionally, was not supported by any evidence on the record. The court did not err by using this standard.

While the burden is on plaintiff to prove her RFC, see Pearsall v. Massanari, 274 F.3d 1211, 1217 (8th Cir. 2001), the ALJ may not make

specific fact findings where there is no evidence supporting them. If there is no evidence supporting a crucial finding, the ALJ's decision "cannot be said to be supported by substantial evidence." Frankl v. Shalala, 47 F.3d 935, 937 (8th Cir. 1995).

To the extent defendant argues that there was substantial evidence supporting the ALJ's decision, a Rule 59(e) motion is not the means by which a party can raise arguments which could have been offered or raised prior to entry of judgment. Hagerman, 839 F.2d at 414. This court considered whether substantial evidence supported the ALJ's decision, and found that it did not.

Therefore,

IT IS HEREBY ORDERED that the motion of defendant to alter or amend the judgment (Doc. 23) is denied.

/S/ David D. Noce
DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed on March 14, 2007.